IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 134 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABHAI GANDABHAI BHARWAD

Versus

STATE OF GUJARAT

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Appearance:

1. Special Criminal Application No. 134 of 2002

MS AYYAR ON BEHALF OF MR RJ GOSWAMI for Petitioner No. 1

MS HANSA PUNANI APP for Respondents

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/04/2002

ORAL JUDGEMENT

Rule. Ms. Hansa Punani, learned APP is directed to waive service.

2. The present petition is filed by the petitioner against the order dtd.24/12/2001 passed by the respondent No.2 in appeal, confirming the externment order

dtd.27/7/2001 passed by the respondent No.3.

3. Heard the learned counsel for the respective parties.

4. Ms.Ayyar on behalf of Mr.RJ Goswami, learned counsel for the petitioner has submitted that the externing authority respondent No.3 - externing authority has issued show cause notice to the petitioner on 23/5/2001. The learned counsel for the petitioner has further submitted that thereafter, the externing authority has passed the impugned externment order on 27/7/2001 externing the petitioner from Ahmedabad (Rural), as well as from contiguous districts namely Ahmedabad City, Gandhinagar, Mehsana, Kheda and Surendranagar for a period of two years, illegally and mechanically. The learned counsel for the petitioner has submitted that the externing authority, relying upon three alleged offences registered against the petitioner, has passed the impugned order, but out of three offence, one offence is not punishable under Chapter XII, XVI or XVII of Indian Penal Code and other offences are stale and the mention of such offences in the show cause notice and externment order exposes non-application of mind which vitiates the impugned order. In support of his arguments, the learned counsel for the petitioner has relied upon MUSTUFAMIYA PIRSAHEDMIYA SAIYED VS. STATE OF GUJARAT AND ANR. reported in 1999(1) GLH 913. Head-Note (B) of the said judgement is as under :-

> Bombay Police Act, 1951 - S.59 - Out of two, one offence is not punishable under Chapter XVI or XVII of IPC - Another offence is stale as it is committed in 1993 - Mention of such offences in show cause notice and externment order exposes non-application of mind.

5. The learned counsel for the petitioner has further submitted that the externing authority has passed the impugned externment order externing the petitioner from contiguous districts, without giving any reasons. She has further submitted that there is no material worth the name against the petitioner for externing the petitioner from contiguous districts. She has further stated that it is true that the externing authority has power to extern the from contiguous districts, but the powers are required to be used judiciously. The learned counsel for the petitioner has drawn my attention to the show cause notice as well as the impugned order and argued that there is no evidence worth the name for externing the petitioner from contiguous districts and,

therefore, there is no reason for externing the petitioner from contiguous districts. In support of her arguments, learned counsel for the petitioner has relied upon the decision of this Court rendered in the case of Mustufamiya (Supra), in which this court in para 8 of the said judgement, has held as under;-

> "8. Another non-application of mind in the show cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural."

Further, this Court in para 17 of the said judgement, has held as under :-

> "17. The externing authority under Section 56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is proposed for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal vs. District Magistrate, Rajkot and another, reported in 3 G.L.R. 807 can be referred on this point."

6. Having heard the arguments of the learned counsel for the respective parties, considering the evidence on record and ratio laid down by this court in the aforesaid judgement, relied upon by the learned counsel for the petitioner, it is clear that out of the three alleged offences registered against the petitioner, one offence is not punishable under Chapter XVI or XVII of IPC, which vitiates the impugned order and further it is also clear that there is no indication in the order of the existence

of the circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district, which shows non-application of mind on the part of the detaining authority and further there is also non application of mind as out of the three offences, one offence is not punishable under Chapter XVI or XVII of Indian Penal Code, which also vitiates the impugned order and hence the impugned externment order cannot be sustained in the eye of law and requires to be quashed and set aside.

7. For the foregoing reasons, the petition is allowed. The impugned externment order dated 24/12/2001 passed by the respondent No.2 in appeal, confirming the externment order dtd.27/7/2001 passed by the respondent NO.3 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(R.P. DHOLAKIA, J.)

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